

Tax Type: Motor Fuel Use Tax
Issue: Motor Fuel Distributor – 5 Day Revocation

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
) Docket No. 00-ST-0000
v.) License #0-0000 & 0-00000
)
ABC OIL COMPANY)
Taxpayer)

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Steve ABC as representative of ABC Oil Company.

The Department of Revenue ("Department") issued a Notice of License Revocation ("Notice") to ABC Oil Company ("taxpayer"). The Notice states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the Motor Fuel Tax Act (35 ILCS 505/1 *et seq.*) because the taxpayer failed to file various returns and pay certain taxes. The taxpayer timely protested the Notice. An evidentiary hearing was held during which the taxpayer admitted that the returns had not been filed and an outstanding liability remained. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 7, 2000, the Department issued a Notice of License Revocation to the taxpayer. The Notice states that the Department intends to revoke the taxpayer's distributor and receiver licenses. (Dept. Ex. #2)

2. The Notice states that the Department is revoking the licenses because the taxpayer failed to file Form RMFT-5, Motor Fuel Distributor/Supplier Tax Return, and Form RMFT-5-US, Underground Storage Tank Tax and Environmental Impact Fee Receiver Return for the month of March 2000. In addition, the taxpayer failed to pay a final assessment totaling \$2,603.08 and has had no activity for two consecutive months. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #2)

3. The taxpayer admitted that there was no activity for two consecutive months. (Tr. p. 9)

4. The taxpayer admitted that the final assessment has not been paid. (Tr. p. 10)

CONCLUSIONS OF LAW:

The Notice issued by the Department states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the Motor Fuel Tax Act (Act), which provides in relevant part as follows:

"The Department may, after 5 days' notice, revoke the distributor's, receiver's, supplier's or bulk user's license or permit of any person * * * who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act * * *

Any person whose returns for 2 or more consecutive months do not show sufficient taxable sales to indicate an active business as a distributor, receiver, or supplier shall be deemed to not be operating as a distributor, receiver, or supplier * * *." (35 ILCS 505/16).

Section 21 of the Act incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination

is *prima facie* correct. 35 ILCS 505/21; 120/4, 5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove that the Department's determination is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of its record was admitted into evidence. In response, the taxpayer has not presented any evidence showing that the basis of the Department's determination is incorrect. The taxpayer has admitted that it owes the amount in question and that there was no activity for at least two consecutive months. Although at the hearing the taxpayer was concerned about an additional fine that was assessed after the issuance of the Notice in this matter, the fine is not the basis upon which the Department is seeking to revoke the taxpayer's licenses. The taxpayer has failed to present evidence to contradict the Department's determination. It is therefore recommended that the Notice of License Revocation be affirmed.

Linda Olivero
Administrative Law Judge

Enter: January 9, 2001